

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Michael J. & Toni K Schuster,
Petitioners-Appellants.

v.

Clayton County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-22-0025
Parcel No. 30-08-331-007

On February 10, 2010, the above-captioned appeal came on for telephone hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Michael J. and Toni K. Schuster, were represented by Attorney Michael Schuster, and submitted evidence in support of their petition. The Clayton County Board of Review designated Clayton County Assessor Andy Loan as its legal representative. The Clayton County Assessor's Office notified this Board the day of the hearing that the Board of Review would not participate in the hearing. The Appeal Board now having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Michael J. and Toni K. Schuster, owners of property located at 302 Lafayette Street, Guttenberg, Iowa, appeal from the Clayton County Board of Review decision reassessing their property. The real estate was classified residential for the January 1, 2009, assessment and valued at \$79,827; representing \$65,967 for the dwelling value and \$13,860 for the land.

The Schusters protested to the Board of Review on the ground that the assessment is for more than authorized by law under Iowa Code section 441.37(1)(b). In response to the protest, the Board of Review notified the Schusters the January 1, 2009, assessment would not be changed.

The Schusters then filed an appeal with this Board on the same ground. They seek \$24,227 in relief and value the property at \$55,600.

The subject property is a one-story, 1197 square-foot dwelling built in 1962 with a 280 square-foot attached garage, located on a 60 by 100 foot lot. The subject property was a rental unit at the time of the assessment. Since the assessment date, the tenants have purchased the subject property on contract from the Schusters. The contract sale price was for \$75,000 in November 2009, after major repairs had been made to the property.

Michael Schuster testified that the subject property was located on a fill site, sinking into the ground, and was in below-normal condition with a need for major repair. Schuster stated that they invested over \$20,000 to improve the property's condition.

Schuster directed this Board to a letter dated January of 2009 from realtor Gary K. Willem that estimated an opinion of a net value of \$55,600 after a 6% sales commission. We note that for assessment purposes the law does not recognize net value, but the actual sales price or sales prices of comparable properties.

The Clayton County Board of Review did not provide any additional evidence or take part in the hearing. In fact, no additional evidence was submitted by either party separate from the certified record. The record submitted by Board of Review member Les Klink was dated June 22, 2009. In the record is a copy of the Schuster property record card with a print date of June 19, 2009, and a spread sheet with eleven sales also dated June 19, 2009. Mr. Schuster objected at hearing to the document that included the sales information. He testified that he had not received the data and it was not presented at his local hearing. The minutes from the Board of Review indicate the decision to deny the protest was on May 19, 2009. This Board will not consider the sales information since it may have been presented to the Board of Review sometime after the Schuster hearing. Therefore, we decline to rely on that evidence since Schusters did not receive the evidence ten days before hearing.

The property record card submitted by the Board of Review indicates the property is in above-normal condition. Based on the repair bills submitted, cost estimates, and Schuster's testimony, it is clear that the property was in below-normal condition.

Reviewing all the evidence, we find the letter of opinion, although lacking of any support data, to be the only evidence other than the property record card to indicate what the correct assessment should be. The Board does not believe that the subject property was in above-average condition as indicated on the property record card at the time of the assessment, based on testimony from the hearing regarding the property's need of extensive repair. As we previously noted, \$55,600 as the net value is not a correct assessment, but the realtor noted his commission is 6%. Based on this information, we conclude the best evidence in the record supports an assessed value of \$59,150.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. Iowa Code § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa code § 441.21.(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value

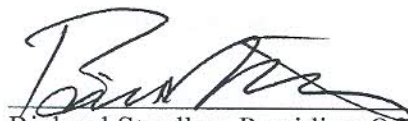
established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

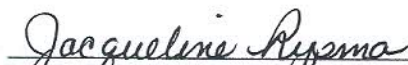
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The evidence in this appeal is scant. However, we find, based on the testimony of the property's condition, and the realtor's opinion of value the property is over-assessed. The correct assessment is \$59,150.


We modify the assessment of the Schuster property determined by the Board of Review, The Appeal Board determines that the property assessment value as of January 2, 2009, is \$59,150; representing \$13,869 in land value and \$45,281 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Clayton County Board of Review, is modified.

Dated this 30 day of March, 2010.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Chair

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Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 3-30, 2010

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☐ Other

Signature

